

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

2021 NOV 15 AM 10:17
M. REGINA THOMAS,
CLERK
Rachael Smith
DEPUTY CLERK

IN RE:)
Mattie Rosetta James,)
Debtor,) Case No: 21-55484-WLH
Vs)
SWH 2017, LP)
Creditor,)
S Gregory Hays, Trustee,)

DEBTOR'S MOTION FOR STAY OF FURTHER PROCEEDINGS IN THIS COURT

PENDING DISPOSITION OF APPEAL:

COMES NOW Debtor, Mattie Rosetta James, in pro per, and moves this Court, pursuant to FRCP 62 (a)(d) for an injunction pending the outcome of the appeal in this matter.

This Motion is based on the Memorandum of Law attached hereto and incorporated herein by reference, good faith and is not interposed for purposes of delay.

Dated this 5 Day of November, 2021

Respectfully submitted,

Mattie Rosetta James
Mattie Rosetta James,
Debtor Pro Se

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

IN RE:)
Mattie Rosetta James,)
 Debtor,) **Case No: 21-55484-WLH**
Vs)
SWH 2017, LP)
 Creditor,)
S Gregory Hays, Trustee,)

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO STAY ORDER PENDING APPEAL**

FACTS:

On October 15, 2021, this Court entered its Order granting the Creditor's Motion for Relief from the Automatic stay. Debtor's attorney, failed to raise any of the arguments or defenses to said Motion on behalf of the Debtor which constitutes a breach of its fiduciary duty and an error or omission in the rendition of professional legal services such that a finding of the ineffective assistance of counsel is highly probable.

That in light of the timely filed notice of appeal and the likelihood that the Creditor, thorough its designated attorneys will attempt to enforce the previously entered Order granting relief from the automatic stay, the instant motion for a stay of this Court's Order of October 15, 2021, is necessary to preserve the status quo between the parties and preserves judicial resources until the appeal filed in this matter is appropriately disposed of by the District Court.

POINTS & AUTHORITIES:

FRCP 62 (a)(d) states in pertinent part that [w]hile an appeal is pending from an interlocutory order, or final judgment that grants, continues, modifies, refuses, dissolves or refuses to dissolve or modify an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights...."

FRCP 62(e) states in pertinent part that [i]f a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give."

The U.S. Supreme Court has indicated that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance...it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."

Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 103 S.Ct. 400, 74 L.Ed.2d 255 (1982); See also, Marrese v. American Academy of Orthopedic Surgeons, 470 U.S. 373, 105 s. Ct. 1327, 84 L.Ed. 2d 274 (1985), reh'g denied, 471 U.S. 1062, 105 S. Ct. 2127, (1985).

As the 11th Circuit Court of Appeals has pointed out, once a notice of appeal has been filed, the "district court retains only the authority to act in aid of the appeal, to correct clerical mistakes, or to aid in the execution of a judgment that has not been superseded." See Showtime/The Movie Channel, Inc., v. Covered Bridge Condominium Ass'n, Inc., 859 F.2d 711 (11th Cir. 1990).

DISCUSSION:

In this instant matter, the appeal from this Court's Order granting relief to the Creditor from the automatic stay was filed in the District Court which operates as the first step in the appellate process. Consequently, the Motion for Stay is filed with this Court in its aid of the pending

appeal to preserve the status quo of the parties pending the outcome of the district court's disposition of the appeal.

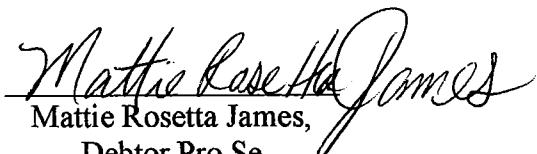
PRAYER FOR RELIEF:

The attorney that had been retained to assist the Debtor in the underlying bankruptcy action breached its fiduciary duty to the Debtor and engaged in such actions or lack thereof which constitute the ineffective assistance of counsel. That the pending appeal will address those issues and in the interim, it is imperative that a stay of the Order granting relief from the automatic stay be entered to preserve both judicial resources and the status quo of the parties to the underlying litigation.

Debtor prays this Court grant the Stay requested herein.

Dated this 15 day of November, 2021

Respectfully submitted,


Mattie Rosetta James,
Debtor Pro Se

CERTIFICATE OF SERVICE

I, Mattie Rosetta James, do hereby certify that I served a copy of the foregoing Motion to Stay on the following parties so entitled to same, to wit:

Brandi N. Wade
GOGGINS STUTZMAN HUDSON WILSON & MIZE, LLP
990 Hammond Drive, Suite 300
Atlanta, GA 30328

S. Gregory Hays
U.S. Trustee
2964 Peachtree Road
Suite 555
Atlanta, GA 30305

By placing same in a sealed envelope addressed as noted herein above, having adequate postage prepaid and affixed thereto and depositing same in the United States Post Office located in Atlanta, Georgia on this the 15 day of November, 2021.


Mattie Rosetta James